

ASSEMBLY BILL

No. 1174

Introduced by Assembly Member Tran

February 22, 2005

An act to amend Section 11512 of the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 1174, as introduced, Tran. State agencies: administrative hearings: reporting.

Existing law requires that the proceedings at a hearing before a state agency or administrative law judge shall be reported by a stenographic reporter unless all parties consent to electronic recording.

This bill would provide that, at the discretion of the agency, the proceedings may be reported either by a stenographic reporter or electronically. It would require that when proceedings are to be reported electronically, the notice of hearing shall state that proceedings will be reported electronically unless the respondent objects in writing within 15 days, in which case the proceedings would be required to be reported by a stenographic reporter.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11512 of the Government Code is
- 2 amended to read:
- 3 11512. (a) Every hearing in a contested case shall be presided
- 4 over by an administrative law judge. The agency itself shall
- 5 determine whether the administrative law judge is to hear the

1 case alone or whether the agency itself is to hear the case with
2 the administrative law judge.

3 (b) When the agency itself hears the case, the administrative
4 law judge shall preside at the hearing, rule on the admission and
5 exclusion of evidence, and advise the agency on matters of law;
6 the agency itself shall exercise all other powers relating to the
7 conduct of the hearing but may delegate any or all of them to the
8 administrative law judge. When the administrative law judge
9 alone hears a case, he or she shall exercise all powers relating to
10 the conduct of the hearing. A ruling of the administrative law
11 judge admitting or excluding evidence is subject to review in the
12 same manner and to the same extent as the administrative law
13 judge's proposed decision in the proceeding.

14 (c) An administrative law judge or agency member shall
15 voluntarily disqualify himself or herself and withdraw from any
16 case in which there are grounds for disqualification, including
17 disqualification under Section 11425.40. The parties may waive
18 the disqualification by a writing that recites the grounds for
19 disqualification. A waiver is effective only when signed by all
20 parties, accepted by the administrative law judge or agency
21 member, and included in the record. Any party may request the
22 disqualification of any administrative law judge or agency
23 member by filing an affidavit, prior to the taking of evidence at a
24 hearing, stating with particularity the grounds upon which it is
25 claimed that the administrative law judge or agency member is
26 disqualified. Where the request concerns an agency member, the
27 issue shall be determined by the other members of the agency.
28 Where the request concerns the administrative law judge, the
29 issue shall be determined by the agency itself if the agency itself
30 hears the case with the administrative law judge, otherwise the
31 issue shall be determined by the administrative law judge. No
32 agency member shall withdraw voluntarily or be subject to
33 disqualification if his or her disqualification would prevent the
34 existence of a quorum qualified to act in the particular case,
35 except that a substitute qualified to act may be appointed by the
36 appointing authority.

37 (d) The proceedings at the hearing ~~shall~~ *may* be reported, *at*
38 *the discretion of the agency, either* by a stenographic reporter *or*
39 *electronically. However, upon the consent of all the parties,*
40 *When the proceedings may are to be reported electronically, the*

1 *notice of hearing shall state that the proceedings will be reported*
2 *electronically unless the respondent objects in writing within 15*
3 *days of the notice. If a timely objection is filed, then the*
4 *proceedings shall be reported by a stenographic reporter.*

5 (e) Whenever, after the agency itself has commenced to hear
6 the case with an administrative law judge presiding, a quorum no
7 longer exists, the administrative law judge who is presiding shall
8 complete the hearing as if sitting alone and shall render a
9 proposed decision in accordance with subdivision (b) of Section
10 11517.

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